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 *
 RONALD JOHNSON & MELVIN HEISER, *
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 Appellants, *
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 v. *
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 Secretary, DEPARTMENT OF REVENUE, *
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 Respondent. *
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 Case Nos. 78-35-PC & 78-44-PC *
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DECISION

This matter is before the Commission following a consolidated hearing, presentation of evidence and testimony; and submission of memoranda from appellants and respondent. It was appealed under s.230.45(1)(c), Wis. Stats. The appellants allege in a consolidated appeal, among other things, that respondent, Department of Revenue's flexible working hour schedule effective January 2, 1979, does not comply with s.230.215(2), Wis. Stats., as it pertains to the authority of the supervisors to approve changes in employe's work arrival and departure time. Accordingly, the Commission does determine the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. The respondent, Department of Revenue, (DOR), consists of four divisions. Appellants, Ronald C. Johnson and Melvin Heiser are auditors in the Fiduciary, Inheritance and Gift Tax Bureau, one of five bureaus in the Division of Income, Sales, Inheritance and Excise Tax, herein after referred to as ISI&E.

2. On December 5, 1978, Daniel G. Smith, Administrator for ISI&E, issued a flexible working hours schedule effective January 2, 1979. This schedule defines the parameters for flexible working hours in ISI&E.

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3. Supervisors of ISI&E are authorized to consider and implement employee work hours within the limitations of the work hour schedule including temporary changes for the personal convenience of the employee.

4. ISI&E supervisors have no authority to deviate from the flexible working hour schedule except as noted in Finding of Fact three.

5. The plan, appellants' Exhibit Seventy-four, provides for starting times at fifteen minute intervals from 7:00 a.m. through 8:30 a.m., lunch periods of thirty minutes, forty-five minutes, or sixty minutes, and ending times at fifteen minute intervals from 3:30 p.m. through 5:15 p.m. This plan requires that at least 25% of the unit's employees and supervisors be present from 7:45 a.m. to 8:30 a.m. as well as from 4:00 p.m. to 4:30 p.m. Schedule conflicts between employees are resolved on the basis of seniority. Unilateral changes in work schedules are received and considered in November of each year.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction of this matter at hand in accordance with s.230.45(1)(c), Wis. Stats. All steps required by the appeal procedure under s. 230.44, Wis. Stats., were taken by appellants and the matter is properly before this Commission for final disposition.

2. The burden of persuasion is on appellants to establish by a greater weight of the credible evidence that the respondent violated s.230.215(2), Wis. Stats., by limiting supervisors' authority to determine changes in employees' work arrival and departure times.

3. Appellants have failed to establish by a greater weight of the

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credible evidence that respondent did not comply with s.230.215(2), Wis. Stats., by limiting supervisors' authority to approve employe elected time of work arrival and departure, when respondent established the December 5, 1978, flexible working hours modification schedule implemented on January 2, 1979.

OPINION

State office hours are statutorily mandated. Section 230.35(4)(f), Wis. Stats., provides that offices of state agencies shall open at 7:45 a.m., and close at 4:30 p.m. with intermissions from 11:45 a.m. to 12:30 p.m. Exceptions to opening and closing times for reasons of service needs or to relieve traffic congestion are upon agency request and permission of the governor. In addition, the legislature has provided for flexible work hour scheduling. Section 230.215(2) of the Wisconsin Statutes is as follows:

"FLEXIBLE-TIME EMPLOYMENT SCHEDULING. In this subsection "flexible-time schedule" means a work schedule which includes required days or hours during which an employe subject to the work schedule must be present for work and designated hours during which the employe, with the approval of his or her supervisor, may elect a time of arrival to and departure from work. Every agency shall develop a plan for the establishment of employe flexible-time schedule experiments. The plan shall attempt to maximize efficiency of agency operations, the level of services to the public, energy conservation and employe productivity and shall consider traffic congestion, transit facilities and other relevant factors." (Emphasis added)

It is clear from these statutes that the legislature has provided the framework for the state agency office hours. Adjustments are possible when the agency obtains permission from the governor. However, state agencies are charged with developing respective flexible-time plans. First line supervisors, within this context, function primarily as administrators and

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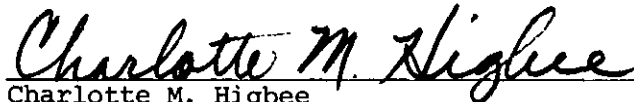
implementors of the agencies' plans. Accordingly, appellants' argument that first line supervisors were authorized by statute to develop flex-time plans is not persuasive.

ORDER

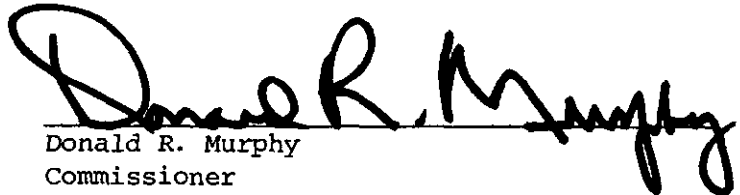
The appeals of appellants, Ronald C. Johnson and Melvin Heiser, are hereby dismissed.

Dated August 29, 1980

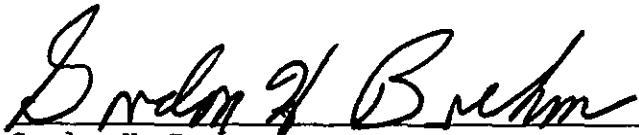
STATE PERSONNEL COMMISSION



Charlotte M. Higbee
Chairperson



Donald R. Murphy
Commissioner



Gordon H. Brehm
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DRM:mgd

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